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ABSTRACT

When problems arose among parents and religious groups over the observance of religious holidays in schools, the Cedar Rapids (Iowa) school board appointed an ad hoc study committee to investigate the issue and make recommendations. The committee represented parents and local businesses and government as well as many local churches and religious groups, both sexes, and several races. It approached the problem in three phases. First, drawing on local professors for expertise, the committee studied the legal questions involved in holiday observance and in the role of religion in the public schools. In phase two the committee reviewed a wide variety of written resources, including position papers from various citizen groups, legal briefs, district correspondence, petitions, newspaper stories, and policies of other school boards. Phase three involved committee interviews with local principals and community and religious groups. The committee then wrote a final report, which was widely circulated, discussed at public meetings and in the press, and eventually accepted in toto by the school board as its policy for one year. The report, which stressed awareness of others' views, proved successful during the next holiday season, so the board adopted its essential elements as its permanent policy. (RW)

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UPDATING SCHOOL BOARD POLICIES

A Component of the EDUCATIONAL POLICIES SERVICE

Volume 13/Number 1/January 1982

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Everyone knew the board's policy

How one district breezed through the holidays

By T. Susan Hill

A January story on holiday observances? No, it's no mistake; no case of a writer missing a deadline. What happened is this: We recently received one school district's report on how it developed a policy on observing religious holidays in school. So excellent was the report that we wanted to share it with other school boards—including a major finding: If done right, it can easily take six months to develop a policy on this controversial topic. And so, in January, we offer the story of the Cedar Rapids, Iowa, school board, whose policy development process makes a good model for school boards everywhere to prepare for holiday celebrations in the next school year.

Richard Schulz's title could be "troubleshooter." The plaque on the door of this Cedar Rapids school administrator, however, reads "assistant superintendent for instruction," and it is behind that office door that Schulz first heard reports of community discontent over how religious holidays were observed in the schools.

It was late in the fall, in 1979, when the first rumblings reached Schulz. Several principals reported parental outrage over traditional Thanksgiving celebrations—or, more accurately, over use of traditional Thanksgiving symbols: stereotyped Indians emerging from wigwams to help Pilgrims celebrate a bountiful harvest over a plentiful turkey dinner. "Let's be more realistic about how this country treated Indians in its early days," said parents. "Shouldn't schools do more, too, to teach the cultural heritage of Native Americans?" they asked.

No immediate action was taken, but Schulz passed along the concerns to the district's multicultural, nonsexist advisory council. (This group, in the past, had served as a sounding board for other sensitive issues—such as how textbooks treated women and minorities.)

At about the same time, the local press began picking up stories of the now famous case of the Sioux Falls, S.D., school board's policy on holiday observances. That policy, eventually upheld by the courts, permitted the observance of religious holidays in schools; the use of religious symbols as teaching aids; and the use of music, art, literature, and drama with religious themes—*if* the historical and cultural values of these holidays, symbols, and themes were presented in an unbiased manner and without sectarian indoctrination.

Cedar Rapids residents followed the policy's court trials with special interest, since their community was in the same federal court jurisdiction as Sioux Falls. They also took a more avid interest in how Cedar Rapids schools observed the 1979 holiday season.

Community uproar

The school administration was not caught unawares. Administrators first contemplated recommending a formal policy to the board, but soon learned from district staff that it was too late to change that year's plans. Music instructors, for instance, had

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By David A. Splitt

SHORTS FROM THE COURTS

Religion, schools, and the First Amendment

Every high school student learns that the First Amendment to the U.S. Constitution states that "Congress shall make no law respecting an *establishment of religion* or prohibiting *the free exercise* thereof." Each first-year law student also learns that the Constitution means "what the Supreme Court says it means."

The late Justice William Orville Douglas echoed the philosophy of Thomas Paine in *Zorach v. Clauson* (1952), suggesting that the best standard for analyzing the Establishment and Free Exercise Clauses of the First Amendment was "common sense." In that case, the Supreme Court sanctioned released time from public school for religious classes which were voluntary, held away from school grounds, not supported by tax dollars, and which used negligible amounts of school staff time.

Although the "common sense" test remains valid, the Supreme Court has added several other legal criteria which state laws and board policies must meet in order to be constitutionally valid.

THE PURPOSE AND EFFECT TEST. In two cases decided together in 1963, *Abington v. Schempp* and *Murray v. Curlett*, the High Court banned daily

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Holiday policy

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been rehearsing choir since summer for Christmas performances. Eventually, from the central office, a directive went out to all principals asking them to conduct any observances in a manner sensitive to minority beliefs. Schulz recalls that in January, 1980, principals were asked to complete a questionnaire on the types of holiday observances their school conducted, and on any complaints observances may have generated.

There were many and, at the January, 1980, school board meeting, public complaints were voiced to the board. Says Schulz: "With the Sioux Falls story splashed all over the countryside, everyone was looking for something wrong. Accusations flew that our schools were doing things they weren't."

One petition, drafted by the Christian Parents for Heritage Preservation and presented at the meeting, had more than 18,000 signatures and called for reinstatement of the traditional celebration of Christ's birth in public schools. "We still feel that America is run by the majority rule," the petition read. "We, therefore, can no longer sit idly by and let the minority rule our school system." The group was rankled by the directive to principals that school celebrations be sensitive to diverse religious groups.

Almost immediately, the board realized that there neither could nor should be any quick resolution to how public schools observed religious holidays. The only things immediately apparent were that the issue needed airing in front of the entire community, and that it required answers to some sticky questions. Didn't the First Amendment, for instance, have something to do with all this? Everyone knew it did, but specifics eluded those present at the meeting. The issue needed study, the board concluded, and directed Superintendent Marvin Maire to appoint a study committee.

Ad hoc study committees have often been the board's first response to controversial policy topics, and this vehicle again proved its worth in the months that followed.

Study committee selected

Five community leaders were selected by Maire, who appointed Schulz as staff liaison. The main selection criterion was that the person be an articulate spokesman for a religious group. The final committee membership also represented local business, local government, parents, both sexes, and several races, among other factors.

Superintendent Maire gave the committee a specific, four-point charge:

1. To gather the differing religious views of the community from parents, staff, and others.
2. To consider pertinent legal issues.
3. To review policies other school boards have adopted on holiday observances.
4. To review and assess past practices of the Cedar Rapids Schools.

The superintendent asked that the committee's work culminate in two projects: a factfinding report and a recommended position statement from which the board could draft a policy. Maire gave the committee three months.

"The committee meetings ran like college seminars," says Schulz, who attributes the high level of performance to the criteria for membership, the specificity of the task given the committee, and the definite deadline for completion of committee work.

The committee members tackled their work in three phases. They studied what law said about religion in the schools, read every document they could find, and finally interviewed community representatives for their views. They also asked for and received permission to take more than three months if they needed more time. (They did.)

Legal questions

"The question of holiday observance in the public schools," the committee wrote in its final report, "seemed almost immediately to require consideration of the wider issue of religion in the public schools." To learn more about that issue, the committee called upon two resource people from local colleges: a professor of religion, who gave the committee a better understanding on the historical relationship of this country's pursuit of religious freedom to the evolution of its public institutions; and a professor of law, who detailed case law clarifying the First Amendment. (See box on cover page for legal commentary.)

Written resources

With a legal framework for further study, the committee proceeded to Phase 2, reading written resource documents. The bibliography seems endless: The PTA provided position papers, as did the American Civil Liberties Union and various religious groups; court cases (especially the Sioux Falls decision) were studied; and the committee received copies of all correspondence and petitions the district received on the topic.

Meanwhile, local newspapers publicized the controversy, and a file of news items and editorials was dutifully provided committee members

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by Assistant Superintendent Schulz. Schulz also wrote to the 24 Iowa districts that are comparable in size to Cedar Rapids, requesting any guidelines they might have on holiday observance. A national inquiry went out to other districts in cities with populations between 100,000 and 300,000. Responses to these inquiries deluged the committee, but members read everything.

Community interviews

An informed committee now prepared itself to talk with whoever had something to add to the debate. Word went out to school staff and community and religious groups (Cedar Rapids is predominantly Christian, but a wealth of religious diversity is found in this community's many Christian sects, its Jewish members, and followers of Mideast and Far East faiths). Parents were not contacted by any special means, but their views were represented, the committee believed, by the membership on the committee of the local PTA president and by the status of other members and interviewees as parents.

From principals, the committee learned that:

- Secondary principals handled more controversy than their elementary counterparts, mostly because high school students deal with material with religious themes—such as great music or art.
- No principal thought it difficult to arrange alternate activities for students who did not want to participate in activities involving religious themes; nor did principals consider nonparticipation a hardship for any child.
- Principals wanted guidelines that allowed them flexibility, but were also specific enough to encourage consistency among schools.
- Principals also cautioned that final guidelines should be worded generally, so that any changes from current practice would not be blamed on specific minorities.

From community and religious groups, the committee learned that:

- There was "an earnest and universal desire that all respect one another's religions."
- Few objected to teaching children about other religions in school, but believed that religious training is the province of parents and religious institutions.

Final report

The committee concluded its work in June, 1980. Yes, a final report and policy recommendations went to the board, but, as the report concluded: "Not the least important aspect of our task has been bearing the message to different parts of our community that all views are important." The policy development process, in other words, proved as important as the product.

"Everyone is sensitive to a wide range of personal preferences," Schulz agrees. He took the committee's report to the principals, who used it in in-service sessions with teachers. The report was aired in public hearings by the board, through the press, and through

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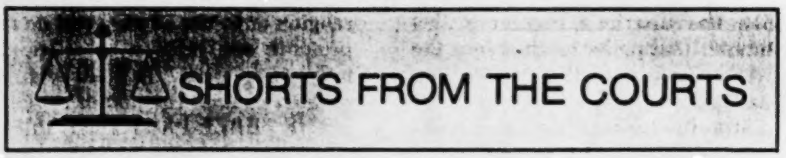

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readings from the Holy Bible, but opined that use of the Bible as a secular educational resource book was permissible. The holding was based first on the requirement that the "purpose and primary effect" of the policy be *secular* in order to avoid violating the Establishment Clause.

THE REASONABLE ACCOMMODATION TEST. The *Abington/Murray* decision also required that public schools make a "reasonable accommodation" of individual religious beliefs and practices to avoid violating the Free Exercise Clause.

- **Public display of Christmas nativity scenes.** The verdict is still out. *Lawrence v. Buchmueller* (N.Y. Supreme Court, 1963) allowed private citizens to use school grounds for a crèche display, but the same practice with more involvement by government officials was banned by a federal appellate court in Washington, D.C., in *Allen v. Morton* (1973).

A November, 1981, decision by a federal court in Rhode Island prohibiting the continuation of a 40-year custom of having a crèche on the public square (*Donnelly v. Lynch*) is being appealed to the Supreme Court.

- **Posting the Ten Commandments.** A Kentucky law requiring posting of the Law of Moses in each classroom was overturned in *Stone v. Graham* (1980).
- **Religious themes in school activities.** The Supreme Court found the annual Christmas assembly to be a permissible observance on a "religious and secular" basis in the *Florey v. Sioux Falls School District* (1980) decision which is the basis for the lead article in this issue.
- **Voluntary school prayer.** A state law in Louisiana was overturned by a federal court in *Karen B. v. Treen* (1981), but the state has appealed.

A few not-so-final words. A few issues *appear* to be settled, but new legal problems are discovered almost every time a school board adopts a new policy dealing with religion. The best legal advice: before you adopt such a policy, get the best legal advice.

The key word in most cases is *coercion*. In order to have a violation of the Establishment Clause, it is not necessary that students be coerced into a religious study or practice. On the other hand, a plaintiff must show coercion (such as restraint of religious beliefs or activities) in order to prove that Free Exercise rights have been abused.

THE NEUTRALITY TEST. The Supreme Court imposed the neutrality test in *Engel v. Vitale* (1962), a decision which found that a New York law requiring that a certain "denominationally neutral" prayer be recited each school day was unconstitutional. The fact that student participation was voluntary (no coercion) was irrelevant, since the state sanction of the prayer

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meetings of various community groups.

And the final policy? The board adopted the committee's report as its own position for one year and let it "run through a holiday season," as Schulz says. Principals reported almost no complaints. So the report was distilled and the essential elements reformulated to be consistent with the district's regular policy manual. This policy has just seen the district through another holiday season.

"We aren't doing things much differently today than we were two years ago," says Schulz, "but we sure have a lot of people around here who know what the Supreme Court says is constitutional, and that's quite a different situation than we had two years ago."

And what is troubleshooter Schulz doing now that the holiday observance controversy has died down? "I'm looking at the morning newspaper . . . front page . . . there's a third of a page devoted to whether schools should teach creation or evolution. I hope not, but I think we're heading into that one." Copies of the policies and regulations on school ceremonies and observances for both the Cedar Rapids Community Schools and the Sioux Falls Independent School District are in this month's *School Administrator's Policy Portfolio.* Ask your superintendent to see them. (EPS file reference: SCHOOL CEREMONIES AND OBSERVANCES, code IND) ■

SHORTS FROM THE COURTS

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violated the Establishment Clause. (For legal history buffs, the school lunch prayer, "God is great, God is good, and we thank Him for our food, Amen" was banned in the case of *Stein v. Oshinsky* (1965).)

Neutrality was more fully explained in *Epperson v. Arkansas* (1968), in which the Court explained that government cannot be "hostile to any religion or to the advocacy of no religion," and that it cannot "aid, foster, or promote one religion or religious theory against another or against the militant opposite." In plain language, school policy cannot create a conflict of *religion against religion* or *religion versus no religion.*

THE THREE-PART TEST. In the oft-quoted case of *Lemon v. Kurtzman* (1971), the Supreme Court attempted to give public officials a multiple part "true-false" test with which to analyze local policies. That test sets three requirements: (1) The policy or law must have a secular purpose; (2) the primary effect of the policy neither enhances nor inhibits religion; and (3) the policy does not foster excessive government entanglement with religion.

THE GOBBLEDYGOOK TEST. Commentators on the *Lemon* tests often overlook Chief Justice Warren Burger's modification of the test in *Tilton v. Richardson* (1971), which held that analysis of establishment of religion cases "must begin with a consideration of the cumulative criteria developed over many years and applying a wide range of government action challenged as violative of the Establishment Clause."

The kinder critics of judicial verbiage sometimes call this the "Historical Context Test," but it is more often seen as a wordy reiteration of the "common sense" approach suggested by Justice Douglas 19 years earlier.

APPLYING THE TESTS. Of course, the fact that the Supreme Court itself adopted a general policy, rather than a laundry list of "dos and don'ts," has resulted in a continuing barrage of First Amendment lawsuits. The underscored words in the three-part test above are the source of most post-*Lemon* arguments. The following are some of the results of that unsettled debate:

- **Invocation and benediction at graduation.** In *Weist v. Mt. Lebanon School District* (1974), the inclusion of these "minor" religious activities in a voluntary school graduation exercise was found to be a noncoercive "permissible accommodation" of religion in the schools.
- **Holding graduation in a Catholic church.** This case was not heard by the Supreme Court, but the federal judge in *Lemke v. Black* banned the practice.

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